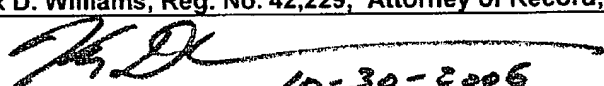


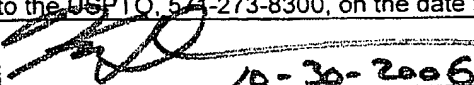
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Address to: Mail Stop AF Commissioner for Patents PO Box 1450 Alexandria, VA 22313-1450	In re Application of: TON ET AL. Application Number: 09/776,794 Confirmation Number: 1595 Filing Date: February 4, 2001 For: Method And Apparatus For Dynamic Allocation and Management of Semaphores for Accessing Shared Resources Art Unit: 2195 Examiner Name: TANG, KENNETH Attorney Docket No.: 84813
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is request for the reasons stated on the attached THREE (3) sheets.</p>	

Attorney of Record	Kirk D. Williams, Reg. No. 42,229, Attorney of Record, phone: 303-282-0151
Signature	 10-30-2006
Date	October 30, 2006

Certificate of Mailing or Transmission Under 37 C.F.R. 1.8 I hereby certify that this Transmittal and all accompanying documents are being deposited with the United States Postal Service with sufficient postage as first class mail, on the date indicated below and addressed to: Mail Stop AF, Commissioner For Patents, PO Box 1450, Alexandria VA 22313-1450, or being facsimile transmitted to the USPTO, 574-273-8300, on the date indicated below.		
Kirk D. Williams, Esq. Reg. No. 42,229	 10-30-2006	October 30, 2006
Name of Person Signing	Signature	Date

**REMARKS ACCOMPANYING
PRE-APPEAL BRIEF REQUEST FOR REVIEW (PABRR)**

Applicants respectfully submit that the claims are allowable and the pending final Office action mailed May 30, 2006, is deficient at least the reasons presented herein and in Amendment C filed March 2, 2006, with these remarks being hereby incorporated by reference in their entirety.

For purposes of this PABRR, Applicants will address the rejection of independent claim 1, as Applicants believe it demonstrates that the final Office action mailed May 30, 2006, contains clear error. Applicants believe there are similar problems with the rejections of other claims, and expressly reserve the right to address these in the Appeal Brief, if necessary.

Applicant respectfully submits that there is clear error in the rejection of independent claim 1 in the final Office action mailed May 30, 2006, for at least the reasons that:

(I) there is clear error in the Office's statement of the doctrine of "teaching away;"

(II) there is clear error in the Office action as the Office clearly fails to establish a *prima facie* case as it fails to provide rejections for each and every claim limitation of each and every claim; and

(III) there is clear error in the obviousness rejections as the Office clearly fails to provide a proper § 103 rejection as the motivation for the combination of the references presented by the Office is clear error, and even if the combination of references would be proper, the combined system neither teaches nor suggests all the claim limitations.

I. Clear Error in fact in the Office's statement of the doctrine of "teaching away."

As a threshold matter as to the integrity of the final Office action mailed May 30, 2006, in response to the Applicants argument that Perks teaches away from the claimed limitation, the Office's response is:

"In response, Perks does not teach away. For a reference to teach away, it has to show that the limitation is specifically not possible to occur. Applicant's arguments are not found to be persuasive."

This is not a proper statement of the rule/law, and this statement contradicts the requirements of MPEP § 2145.X.D. Therefore, the Office failed to properly address all of Applicants arguments, and the Office action is incomplete according to the MPEP. This is clear error.

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II. Clear Error In The Office Action As The Office Clearly Fails To Provide Rejections For Each And Every Claim Limitation Of Each And Every Claim.

It is well-established law that the burden is on the Office to initially present a *prima facie* unpatentability (e.g., anticipation, obvious) rejection, before Applicant has any burden of proof of disproving any application of a cited reference against a claim. *In re Warner*, 379 F2d. 1011, 1016, 154 USPA 173, 177 (C.C.P.A. 1967); *Ex parte Skinner*, 2 USPQ2d 1788, 1788-89 (B.P.A.I. 1986). In order to establish a such *prima facie* case, each and every claim element/limitation must be addressed by the Office action.

Independent claim 1 recites the limitation of "said determining whether or not the first resource is available includes checking the data structure for an indication of the first resource" and the Office action fails to provide a teaching for this limitation. Furthermore, Applicants respectfully submit that the prior art of record neither teaches nor suggests such a limitation, but Applicants have no burden of presenting such an argument until the Office presents a *prima facie* rejection as required by the MPEP.

III. Clear error in the obviousness rejections as the Office clearly fails to provide a proper § 103 rejection as the motivation for the combination of the references presented by the Office is clear error, and even if the combination of references would be proper, the combined system neither teaches nor suggests all the claim limitations.

In rejecting independent claim 1, the final Office action, on page 3, asserts the combination of Buckler and Perks is motivated "because this would simplify the use of semaphore facilities" citing col. 2., lines 9-11 of Buckler et al. (basically copying a statement out of context). In response to Applicants traversal of this rational and requesting a specific teaching or understanding for a motivation to combine the references, the Office justifies the combination on page 10 of the final Office action as "Perks and Buckler are both in the same field of endeavor of dynamic semaphore management." Applicants respectfully submit that the original motivation was clear error, and that it is clear error that an assertion that two references are in the

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same field of endeavor provides a proper motivation for a combination. (Applicants note that the Office action relies on this same "field of endeavor" argument in combining other references in rejecting the other pending claims).

Moreover, there is clear error in the interpretation of the reference. Claim 1 recites, *inter alia*, "receiving a request to access a first resource of the plurality of resources from a first task and in response, determining whether or not the first resource is available, said determining whether or not the first resource is available includes checking the data structure for an indication of the first resource; and in response to said determining whether or not the first resource is available determining that the first resource is available: allocating a first semaphore, updating the data structure with indications of the first resource and the first semaphore, and signaling to the first task that the first resource is available."

The final Office action (page 3) relies on FIG. 4 and col. 57-60 of Perks in rejecting these limitations in combination with Buckler.

FIG. 4 and col. 57-60 is directed to the "destructor method." However, Perks explicitly teaches that the destructor method is concerned with deleting semaphores. Perks., col. 4, lines 57-58 ("The destructor deletes the semaphore"); Perks, col. 5, lines 2-4 ("The destructor method deletes each semaphore within the collection."). This neither teaches nor suggests determining when the resource is available and updating the data structure with indications of the first resource as stated on page 3 of the final Office action, and relied upon for rejecting independent claim 1. This is clear error.

For at least these reasons, Applicants believe they have presented that there is clear error in the Office action; and Applicants caution that the clear error is not limited to the rejection of independent claim 1, and hereby incorporate the arguments presented in Amendment C.